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3/6/03
Plant Patent Application
Serial No. 09/664,247
Confirmation No. 4085
Attorney Docket No.: 2384-001440

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Application No. 09/664,247
Filing Date: September 18, 2000
Appellant: ELSNER, WILHELM
Examiner - Susan B. McCormick
Art Unit 1661

Pittsburgh, Pennsylvania
February 24, 2003

REQUEST FOR ORAL HEARING

Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicant hereby requests an oral hearing in the Appeal of the above-identified plant patent application.

The fee of \$280.00 for this Request for Oral Hearing is submitted herewith. The Commissioner for Patents is hereby authorized to charge any additional fees associated with this communication to Deposit Account No. 23-0650. Please refund any overpayment to Deposit Account No. 23-0650. An original and two copies of this Request are enclosed.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

By 

Russell D. Orkin
Registration No. 25,363
Attorney for Applicant
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219-1818
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com

02/27/2003 TSUGGS 00000009 09664247

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Part / #15 -

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February 24, 2003

PETITION UNDER 37 C.F.R. § 1.182

Commissioner for Patents
Washington, D.C. 20231

Sir:

Petition is hereby made for an order to the Board of Patent Appeals
and Interferences to conduct an expedited, joint oral hearing on the pending appeals of
the plant patent applications identified below:

02/27/2003 TSUGGS 00000010 09664247
01 FC:1460 130.00 OP

Application SN 09/664,247
Filed: September 18, 2000
For: Variety of Geranium Named 'Pendec'
Applicant: Wilhelm Elsner
Attorney Ref. No.: 2384-001440

And

Application SN 09/286,130
Filed: April 12, 1999
For: Floribunda Rose Plant Named KORrogilo
Applicant: Wilhelm Kordes
Attorney Ref. No.: 6507-51530

And

Application SN 09/267,559
Filed: March 12, 1999
For: Hybrid Tea Rose Plant Named JACopper
Applicant: Keith W. Zary
Attorney Ref. No. 2747-51708

Each of these applications has a single claim which stands rejected upon a single, identical ground, namely, the plant of the respective application was described in a foreign publication more than one year before the application was filed (which description was admitted standing alone not to be sufficient to have enabled one skilled in the art to practice the claimed invention), and the plant was on sale in a foreign country (but not in the United States) more than one year before the filing date.

This ground for rejection has adverse implications for the entire patent system, as any non-enabling publication relating to a product coupled with the availability of a product in any country outside of the United States, both more than a year before the United States application filing date, would now be prior art.

An expedited hearing is requested because this single issue is present, we are told, in approximately two hundred plant patent applications and is a new basis for rejection raised for the first time in a plant patent application in 2000. The Webb Law Firm has an estimated thirty or more plant patent applications pending that have been or will be subject to a 35 U.S.C. § 102(b) rejection upon the basis utilized in the applications of this petition. The Webb Law Firm has received direction from Applicants outside of the United States to abandon several applications which have been rejected upon the basis utilized in the subject applications because of the costs associated with an appeal, and has also received indication in other instances that applications for plant patents would not be filed because of the likelihood that the applications would be rejected under 35 U.S.C. § 102(b) because the plant of the

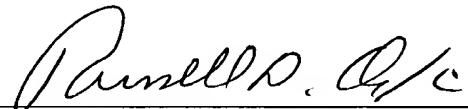
prospective application had been the subject of a breeder's rights application and on sale in a foreign country more than one year before a United States plant patent application could be filed. Without the prospect of obtaining a plant patent, the introduction of many ornamental or commercially valuable plants will not be made to the detriment of the American public.

For the reasons set forth in the briefs in the appealed applications, it is believed the rejections are not in accordance with the law, and because of the large number of applications involved and the economic damage that will result unless the current policy is rectified, an early hearing and consideration of these appeals is believed to be in order.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
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Russell D. Orkin
Registration No. 25,363
Attorney for Applicant
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700 Koppers Building
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